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D.B. CIVIL SPECIAL APPEAL NO.127/2006.
[MANOJ KUMAR VS. STATE OF RAJASTHAN]

Date of Order : 30.07.2007

HON'BLE JUSTICE SHRI RAJESH BALIA
HON'BLE JUSTICESHRI MAHESH CHANDRA SHARMA

Mr. Anil Bhandari for the appellant;
Mr.L.R.Upadhyay Dy.G.A.

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Heard learned counsel for the parties.

With the chequered history of previous litigation, this appeal is against the order of the learned Single Judge dated 06.01.2006 dismissing the writ petition filed by the petitioner claiming his emoluments in the regular pay scale w.e.f. the date from which he was conferred with the status of semi-permanent on the workcharge establishment of the respondent on completion of two years of continuous service.

The petitioner was first appointed as a daily rated workmen under workcharge establishment establishment of respondent on 01.01.91 under the Workcharge Establishment Rules, 1964 which is applicable to the Irrigation Department of the State Government and of which Mahi Project is a part. The Rules envisage that on 2 years of completion of service a person employed in Workcharge Establishment is entitled to

semi-permanent status and avail regular pay scale and certain other benefits though the same were not equivalent to the permanent employees. The permanent status is envisaged on completion of 10 years of service on Workcharge Establishment.

It is in the aforesaid circumstances when the petitioner's services were terminated on 04.02.1991 he challenged the termination order by filing S.B.Civil Writ Petition No. 3130/1991 which was decided on 11.01.1996.

Before the learned Single Judge for the aforesaid writ petition no issue was joined on the question that the petitioner was appointed as a casual labour and if his services are found satisfactorily he cannot be considered for grant of semi permanent status on completion of two years of service but the respondent contended that in the case in hand petitioner has left services in the year 1989 voluntarily and he is no more in service. The learned Single Judge without going into the question whether the petitioner is in service or left the service in the Year 1991 directed the respondents to consider the case of the petitioner for grant of semi-permanent status if he had completed two years of service till the alleged date he left the service. Subject to the aforesaid, the petition was dismissed.

After the judgment was pronounced on 11.01.1996 vide order dated 01.08.1996 the petitioner was declared semi-permanent w.e.f. 01.09.1990 leaving it beyond the pail of doubt that the petitioner did completed two years continuous service satisfactorily before the alleged date of his termination of service as a casual labour in the Year 1991.

This order was made while appeal of the petitioner against the order of learned Single Judge dated 11.01.1996 was pending before this Court.

After the order was made on 01.08.1996 giving the petitioner semi-permanent status w.e.f. 01.09.1990 on 14.08.1996 the petitioner claimed for arrears of salary w.e.f. 01.09.1990 to 31.07.1996 in the payscale which has not been awarded to him. He also claimed certain other payments relating to travelling allowance but that claim is not before us.

He again represented for grant of entire financial relief in pursuance of grant of semi-permanent status w.e.f. 01.09.1990 by letter dated 19.05.1997 and 08.08.1997. It further transpires that vide order dated 02.08.1999 notwithstanding conferment of semi-permanent status w.e.f. 01.09.1990 vide

communication dated 02.01.1999 was issued, the petitioner was being paid as a daily rated workman under the impression that because while passing the order on application for interim relief in S.B.Civil Writ Petition NO.3130/1991 the petitioner has been taken back on duty in continuation of 08.08.1991 in pursuance of the directions of the learned Single Judge dated 08.07.1991 and was continuing in the service only as daily rated workman. The communication dated 22.01.1999 conveyed that the interim order is issued by the Hon'ble High Court for maintaining daily wage status of the workman. However, the said order did not bar the department from paying salary to its workmen in accordance with his status under the Workcharge Rules. The regular emoluments in regular pay scale were released to the petitioner only in pursuance of the said directions dated 02.01.1999 w.e.f. that date by taking him to be semi-permanent status w.e.f. 01.09.1990 in pursuance of the order dated 01.08.1996.

When the Special Appeal of the present appellant came for hearing before Division Bench it was claimed that though the respondents have conferred semi-permanent status on the appellant w.e.f. 01.09.1990 to January 1996 but he is not being paid the emoluments on that basis. The petitioner counsel prayed for a direction to the respondent to give

complete effect to the order of the conferment of semi-permanent status.

However, the Court declined to grant that relief in the pending special appeal No.108/96 observing that in compliance of the directions to respondent to confer the status of petitioner in semi-permanent status w.e.f. 01.09.1990 same has been complied with. But claim to emoluments in pursuance of the conferment of status of semi permanent constitute an independent cause of action and the petitioner could select his remedy and pursue the matter independently. But in the pending proceedings no further relief cannot be granted to the appellant.

In view of the aforesaid observation the appeal was dismissed but this led to filing of the present writ petition No.3998/2004 seeking a mandamus to the respondent to give regular pay scale and difference of arrears to the petitioner w.e.f. 01.09.1990 with effect from which he was conferred semi permanent status entitling him to be fixed in pay scale, until 10.03.2000 the date on which he was absorbed as Lower Divisional Clerk on the regular establishment.

The writ petition filed by the petitioner has been

dismissed by the learned Single Judge vide judgment under appeal by referring to Annexure 7 in which the petitioner has said that he has not been given other benefits except the regular pay scale. The learned Single Judge inferred that since even according to him regular pay has been paid to him no case for further direction is made out.

Having considered the material before us and having heard learned counsel for the parties it is apparent that when the writ petition was filed the surviving question was not whether the petitioner is being paid in the regular pay scale but the surviving issue was whether the petitioner is entitled to be paid in regular pay scale w.e.f. the date of conferment of semi-permanent status or he was required to be paid regular pay scale only w.e.f. the date of the order of conferment of semi-permanent status was made with retrospective date in terms of Rules of 1964.

From the material placed on record it is apparent that petitioner is claiming his emoluments in the regular pay scale w.e.f. the date he has been conferred with semi-permanent status i.e. to say w.e.f. the date since 01.09.1990 and has claimed all arrears time and again. This was the prayer which the petitioner has made before the Division Bench in the

previous special appeal also,during which the order conferring semi permanent status had come into existence. Since the original petition way not for claiming benefit flowing from said order the petitioner was relegated to persue his remedy in respect thereof independently. Therefore, in our opinion the learned Single Judge has clearly erred in drawing inference that petitioner has been given the benefit of regular pay scale in accordance with the Rules.

Under Workcharge Establishment Rules the employees are categorised in three categories. Casual with Semi-permanent Status and with Permanent Status. The casual workers are those who were employed on daily wages. On completion of two years of satisfactory services as a daily rated workmen one becomes entitled to status of semi-permanent and with that status he becomes entitled to emoluments in the regular pay scales and certain other benefits though not in all respects equal to the regular emoluments under regular pay scale but the fact remains that so soon an employee on workcharge establishment gets semi-permanent status, he becomes entitled to be paid in the regular pay scales.

From the material placed on record it is apparent that petitioner has been through out in the continuous service of the

respondents on workcharge establishment inasmuch as even after his services were terminated in the Year 1991 he was reinstated with the same status during the pendency of writ petition and continued so until in pursuance of the directions of the learned Single Judge his case was considered and he was found entitled to be put in semi-permanent status w.e.f. 01.09.1990. The implicit consequence was to follow that from 01.09.1990 he become entitled to be paid emoluments in the regular pay scale applicable to the workcharge establishment employee and for the work discharged. The claim of the petitioner is founded on the work actually discharged by him on the workcharge establishment for the period he was conferred with semi-permanent status.

Therefore, by no reasoning the petitioner could be denied regular emoluments payable to him under the Rules as are payable to semi-permanent workmen w.e.f. 01.09.1990. It is not a case in which principle of no work no pay can be applied.

The contention of the respondent that petitioner had gone out of employment by voluntarily leaving job in the Year 1991 stand belied by the fact that after the termination order was challenged before this Court, under directions of this

Court the petitioner was reinstated w.e.f. 08.08.1991 and he continued in service on workcharge until he was regularly employed in regular establishment as LDC. Infact while continuing on the workcharge establishment he acquired the eligibility to be regularly selected and appointed as LDC under the Rajasthan Ministerial Staff in Subordinate Office Rules, 1957 which provided certain percentage of employees to be appointed as LDC on completion of a specific period of service on work charge establishment provided they hold the required educational qualification for the post.

It is in the aforesaid scenario we have no hesitation in coming to the conclusion that petitioner appellant is entitled to emoluments as are payable to semi-permanent employees under the Workcharge Establishment w.e.f. 01.09.1990. When he did not remain merely a daily rated work man.

Accordingly, this appeal is allowed. Judgment under appeal is set aside. As a result of aforesaid discussion the writ petition is allowed. The respondents are directed to pay to the petitioner appellant emoluments in the regular pay scale and other benefits are payable to semi-permanent status employee under the Workcharge Establishment Rules 1967 w.e.f. 01.09.1990 until the date he was appointed as LDC and

arrears arising on account of aforesaid direction may be paid to the petitioner within a period of three months with interest @ 9% from the date of the order of conferring semi-permanent status on the petitioner i.e. from 01.08.1996. However, in working out arrears all amounts actually paid to the petitioner for the period in question shall be adjusted.

No costs.

(MAHESH CHANDRA SHARMA),J. (RAJESH BALIA), J.

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